

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS SERVICE	DOCKET NO. RMU-99-7
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ORDER COMMENCING RULE MAKING

(Issued July 23, 1999)

Pursuant to the authority of IOWA CODE §§ 476.2 and 476.3(1) (1999) and 1999 Iowa Acts, Chapter ____ (this number not yet available), identified during the session as House File 588, the Utilities Board proposes to adopt the amendments attached hereto and incorporated by reference. These proposed rules add new subrules IOWA ADMIN. CODE 199-6.8 and 22.23. The reasons for proposing these amendments and new subrules are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making, identified as Docket No. RMU-99-7, is commenced for purposes of receiving comments upon the proposed amendments attached to this order.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 23rd day of July, 1999.

UTILITIES DIVISION [199]

NOTICE OF INTENDED ACTION

Pursuant to the authority of Iowa Code section 476.2 (1999) and 1999 Iowa Acts, Chapter ____ (number not yet available), identified during the 1999 legislative session as House File 588, the Utilities Board (Board) gives notice that on July 23, 1999, the Board issued an order in Docket No. RMU-99-7, Unauthorized Changes Of Telecommunications Service, "Order Commencing Rule Making," to receive public comment on the adoption of proposed rules relating to changes in telephone services that are not authorized by the affected customer. On the same date, the Board also issued an order adopting many of the same proposed rules on an emergency basis and without notice and public participation, pursuant to Iowa Code section 17A.4(2), effective on August 1, 1999, pursuant to Iowa Code section 17A.5(2)"b." A separate notice of the emergency rule making is being published contemporaneously with this notice of intended action. It is the Board's intention that the proposed rules contained in this notice, modified if necessary based upon the comments received, will be adopted to replace the emergency rules.

These amendments are intended to implement a new statute, House File 588, which became effective on July 1, 1999. Entitled "An Act Prohibiting Unauthorized Changes In Telecommunications Service, Prohibiting Certain Acts In The Advertisement Or Solicitation Of Changes In Telecommunications Service, And Providing Remedies And Penalties" (hereinafter HF 588), the new statute provides

the Board with the authority to adopt rules to protect consumers from unauthorized changes in their telecommunications service, even if the service has been deregulated pursuant to Iowa Code section 476.1D. HF 588 also provides the Attorney General with additional remedies to address the issue of fraud in the sale of telecommunications services.

Unauthorized changes in telecommunications service may take a variety of forms. Unauthorized changes in a customer's preferred carrier are sometimes referred to as slamming, while the addition of unauthorized services to a customer's bill is sometimes called cramming. These activities represent a growing area of concern for telecommunications customers in Iowa.

In 1996, the Board deregulated most interexchange services, pursuant to IOWA CODE § 476.1D. Since that time, the Board has had limited jurisdiction over the part of the telecommunications market where most slamming has occurred. Nonetheless, the Board continues to receive a significant number of complaints. In 1998, Board staff responded to 428 calls regarding slamming issues and 174 calls alleging cramming. In 1997, Board staff fielded 211 slamming calls (cramming complaints were not separately tracked).

The Consumer Protection Division of the Attorney General's Office also processes many complaints regarding telecommunications services. The Board understands that the Consumer Protection Division received about 275 such complaints in 1995, 480 complaints in 1996, 937 complaints in 1997, and approximately 1,300 complaints in 1998. The trend is clear and disturbing.

Pursuant to HF 588, the proposed new rules will apply with equal force to regulated and deregulated services. The Board's rules must be consistent with the regulations of the Federal Communications Commission (FCC) regarding procedures for verification of customer authorization of a change in service. The FCC verification procedures include written or electronic authorization or independent third-party verification. The Board's rules must also provide for (1) customer notification of any changes in service, (2) procedures for customer account change freezes, and (3) procedures for correcting unauthorized changes and compensating customers and other persons whose interests may be damaged by an unauthorized change in service. Finally, HF 588 gives the Board expanded remedial authority with respect to telecommunications service providers that make unauthorized changes, including civil penalties for any violations of the statute or rules and more severe penalties for patterns of violations.

On December 17, 1998, the FCC issued an order in The Matter Of Implementation Of The Subscriber Carrier Selection Provisions Of The Telecommunications Act Of 1996, CC Docket No. 94-129 (the "FCC Order"), adopting new rules intended to protect each consumer's choice of telecommunications service providers. In this rulemaking, the Board proposes to adopt the FCC verification procedures by reference, so there can be no question regarding consistency.

Item 1 of the proposed rules would add a new subrule 6.8 to the Board's rules, specifying certain special complaint procedures for allegations of unauthorized

changes in telecommunications services. Generally, the complaints will be resolved pursuant to the Board's standard complaint procedures, with informal proceedings, a proposed resolution from Board staff, and an option for formal complaint proceedings in appropriate cases. However, a few special procedures will apply. For example, the time for the telephone utility's response to the initial complaint will be reduced to ten days, to be consistent with the FCC's verification procedures, and the proposed resolution may include an assessment of damages among the interested persons in each complaint proceeding, pursuant to HF 588, § 1. In this context, the Board interprets the term "assessment of damages" to mean, in most cases, only an allocation of the various telecommunications service charges at issue. Thus, the proposed resolution (or a Board order following formal complaint proceedings) will allocate responsibility for primary interexchange carrier (PIC) change charges, service charges, and other charges that have or may appear on the customer's bill, but in the absence of unusual circumstances the proposed resolution or order will not assess among the parties any responsibility for incidental, consequential, punitive, or similar damages.

Item 2 of the proposed rules begins with a definitions section. The definitions include specialized terms such as "slamming" (unauthorized changes in a consumer's preferred service provider), "cramming" (unauthorized additions or changes to the services on a customer account, for which a separate charge is made), and "jamming" (unauthorized account freezes that make it more difficult for a customer to change service providers upon demand).

The next section in Item 2, identified as proposed subrule 22.23(2), prohibits unauthorized changes in service and provides for verification of all changes to a customer account, along with customer notification of any such changes. Changes made at the request of a submitting service provider must be verified using one of the three FCC-approved verification procedures. Changes made as a result of a direct customer request to the executing service provider may be verified using the FCC procedures or through the internal records of the executing service provider, if those records contain sufficient information to establish the date and time of the request and the identity of the requesting customer. The proposed rules require that all verifications must be maintained for at least two years from the date the change is implemented. Verification of a preferred carrier freeze, however, must be maintained for the life of the freeze, since a customer may not be aware of an unauthorized freeze until the customer tries to change the service.

The proposed rules require customer notification of all changes in service within 30 days of the effective date of the change, as required by HF 588, § 1. The notice must clearly and conspicuously identify the change, any charge or fee associated with the change, and the name and toll-free contact number of the service provider responsible for the change. This information may be included as a line item in the billing portion of the customer's bill, as a separate written statement on the bill, in a separate mailing to the customer, or by such other means as will provide the required information in a clear and conspicuous manner.

The proposed rules adopt by reference the FCC regulations regarding preferred carrier freezes. The Board notes that the FCC rules do not make express provision for verification of the lifting of a freeze if that occurs separate from a change in service. The Board invites comment concerning the question of whether some form of verification is, or should be, required when a service freeze is lifted, especially if that change occurs separate from any other service changes.

The next section of the proposed rules, identified as subrule 22.23(3), requires that all carriers providing or billing for telecommunications services to customers located in Iowa register with the Board, using the form provided. This will allow the Board to assemble a directory of telephone service providers offering services in Iowa, permitting Board staff to contact each of them in the event a customer complaint is received. This directory is a critical part of the Board's power to enforce these rules. As noted previously, in 1998 the Board received 428 calls alleging slamming. These calls appeared to involve over 100 non-local service providers. In some cases, the service provider's name (as provided by the complaining customer) appears to be a variation on the name of another, often well-known, carrier. This sometimes makes it difficult for the Board to determine whether the alleged slammer is an established carrier or a new entrant that may have intentionally adopted a similar name in an attempt to confuse potential customers. The directory should help to resolve these issues more easily and quickly.

The next section of the proposed rules, identified as proposed subrule 22.23(4), refers the reader to chapter 6 of the Board's rules for the applicable complaint procedures.

Proposed subrule 22.23(5) provides penalties for violations of the anti-slamming statute or rules. These include civil penalties for any violation of the provisions of HF 588 or the proposed Board rules, along with more severe sanctions for behavior revealing a pattern of violations on the part of a telephone service provider. The Board is not proposing a specific number of violations that will establish a pattern of violations; the number may vary depending upon the circumstances. For example, a service provider that has only ten customers in the state, all ten of whom are the victims of slamming, may have demonstrated a pattern of violations sufficient to justify severe sanctions, while a service provider with hundreds of thousands of customers in Iowa and 20 slamming complaints may be experiencing only a small percentage of inadvertently mishandled customer requests, which may not amount to a pattern of violations. Further complicating the question of what constitutes a pattern of violations is the fact that as service offerings get more numerous and complex, the resulting confusion is likely to produce more service order errors, both by customers and service providers. For these reasons, the Board proposes to determine whether a provider has shown a pattern of violations based upon the facts of each specific situation, after notice to the affected persons and an opportunity for hearing.

Finally, proposed subrule 22.23(7) includes provisions for addressing complaints between telephone service providers. HF 588 grants primary jurisdiction over this subject matter to the Board. The proposed rule includes a provision permitting any party to request that a matter be immediately docketed as a formal complaint proceeding, bypassing the informal process, in appropriate circumstances.

Any interested person may file a written statement of position on the proposed rules no later than October 4, 1999, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on October 21, 1999, in the Board's hearing room at the address listed above.

These amendments are intended to implement Iowa Code section 476.2, 476.3(1), and HF 588.

Item 1. Amend 199 IAC 6 by adding the following new rule:

6.8(476) Special procedures for complaints alleging unauthorized changes in telecommunications services. Notwithstanding the deregulation of a communications service or facility pursuant to Iowa Code section 476.1D, complaints alleging an unauthorized change in telecommunications service (see rule

22.23) will be processed pursuant to the rules set forth in this chapter with the following additional or substituted procedures:

a. Upon receipt of the written complaint and with the customer's acknowledgement, a copy of the complaint will be forwarded to the executing service provider and the preferred service provider as a request for a change in the subscriber's service to the subscriber's preferred service provider, unless the service has already been changed to the preferred service provider.

b. The complaint will also be forwarded to the alleged unauthorized service provider. That entity shall file a response to the complaint within ten days of the date the complaint was forwarded. The response must include proof of verification of the subscriber's authorization for a change in service or a statement that the unauthorized service provider does not have such proof of verification.

c. If the alleged unauthorized service provider includes with its response alleged proof of verification of the subscriber's authorization for a change in service, then the response will be forwarded to the customer. The customer will have ten days to challenge the verification or otherwise reply to the service provider's response.

d. As a part of the informal complaint proceedings, Board staff may issue a proposed resolution to determine the potential liability, including assessment of damages, for unauthorized changes in service among the customer, the previous service provider, the executing service provider, and the submitting service provider, and any other interested person. In the event of a soft slam (as defined in 199 IAC 22.23(1)"j"), Board staff may also propose joint and several liability between the

reseller and the facilities-based service provider. In all cases, the proposed resolution shall allocate responsibility among the interested persons on the basis of their relative responsibility for the events that are the subject matter of the complaint. For purposes of this rule and in the absence of unusual circumstances, the term "damages" means charges directly relating to the telecommunications services provided to the customer that have appeared or may appear on the customer's bill. The term "damages" does not include incidental, consequential, or punitive damages.

e. If the complainant, the service provider, Consumer Advocate, or any other interested person directly affected by the proposed decision is dissatisfied with the proposed resolution, a request for formal complaint proceedings may be filed. A request for civil penalties or for other penalties pursuant to 199 IAC 22.23(5) or (6) may also be filed with the request for formal complaint proceedings, although failure to request civil penalties as a part of the request for formal complaint proceedings does not preclude a later request for civil penalties. A request for formal complaint proceedings will be processed by the Board pursuant to 199 IAC 6.5 et seq.

If no request for formal complaint proceedings is received by the Board within 14 days after issuance of the proposed resolution, the proposed resolution will be deemed binding upon all persons notified of the informal proceedings and affected by the proposed resolution. Notwithstanding the binding nature of any proposed resolution as to the affected persons, the Board may at any time and on its own

motion initiate formal proceedings which may alter the allocation of liability and which may seek civil and other penalties.

f. No entity shall commence any actions to re-bill, directly bill, or otherwise collect any disputed charges for a change in service until after Board action on the complaint is final. If final Board action finds that the change in service was unauthorized and determines the customer should pay some amount less than the billed amount, the service provider is prohibited from re-billing or taking any other steps whatsoever to collect the difference between the allowed charges and the original charges.

Item 2. Amend 199 IAC 22 by adding the following new rule:

199–22.23(476) Unauthorized Changes In Telephone Service.

22.23(1) Definitions. As used in this rule, unless the context otherwise requires:

a. "*Change in service*" means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. "*Consumer*" means a person other than a service provider who uses a telecommunications service.

c. "*Cramming*" means the addition or deletion of a product or service for which a separate charge is made to a telecommunications consumer account without the verified consent of the affected consumer. Cramming does not include the addition

of extended area service to a customer account pursuant to Board rules, even if an additional charge is made.

d. "*Executing service provider*" means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider or from its own customer.

e. "*Jamming*" means the addition of a preferred carrier freeze to a consumer's account without the verified consent of the consumer.

f. "*Letter of agency*" means a written document complying with the requirements of 47 C.F.R. § 64.1160.

g. "*Preferred carrier freeze*" means the limitation of a consumer's account so as to prevent any change in preferred service provider for one or more services unless the consumer gives the service provider from which the freeze was requested the consumer's express consent.

h. "*Service provider*" means a person providing a telecommunications service, not including commercial mobile radio service.

i. "*Slamming*" means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, without the verified consent of the consumer.

j. "*Soft slam*" means an unauthorized change in service by a service provider that uses the carrier identification code (CIC) of another service provider, typically through the purchase of wholesale services for resale.

k. *"Submitting service provider"* means a service provider who requests another service provider to execute a change in service.

l. *"Telecommunications service"* means a local exchange or long distance telephone service other than commercial mobile radio service.

m. *"Verified consent"* means verification of a consumer's authorization for a change in service.

22.23(2) *Prohibition of unauthorized changes in telecommunications service.*

a. *Verification required.* No telecommunications carrier shall submit a preferred carrier change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with the procedures set forth in 47 C.F.R. § 64.1150 (1999). No telecommunications carrier shall execute a change in service on one of its own customer accounts unless and until the change has first been confirmed in accordance with the procedures set forth in 47 C.F.R. § 64.1150 (1999) or through maintenance of sufficient internal records to establish a valid customer request for the change in service. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification of the identification of the person requesting the change in service. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service.

All verifications shall be maintained for at least two years from the date the change in service is implemented. Verification of service freezes shall be maintained for as long as the preferred carrier freeze is in effect.

b. Letter of agency form and content. A letter of agency must conform to the requirements of 47 C.F.R. § 64.1160 (1999).

c. Customer notification. Every change in service shall be followed by a written notification to the affected customer to inform the customer of the change. Such notice shall be provided within 30 days of the effective date of the change. Such notice may include, but is not limited to, a conspicuous written statement on the customer's bill, a separate mailing to the customer's billing address, or a separate written statement included with the customer's bill. Each such statement shall clearly and conspicuously identify the change in service, any associated charges or fees, the name of the service provider associated with the change, and a toll-free number by which the customer may inquire about or dispute any provision in the statement.

d. Preferred carrier freezes. Preferred carrier freezes must comply with the requirements of 47 C.F.R. § 64.1190 (1999).

22.23(3) *Carrier registration.*

a. Registration required. Each carrier that provides or bills for telecommunications services to customers located in Iowa shall register with the Board and shall provide, at a minimum, the information specified in the form that appears in this subrule.

UTILITIES BOARD

TELECOMMUNICATIONS SERVICE PROVIDER REGISTRATION

1. FULL NAME OF CARRIER PROVIDING SERVICE IN IOWA:

2. CARRIER MAILING ADDRESS (including 9-digit zip code):

3. NAME, TITLE, TELEPHONE NUMBER, AND FAX NUMBER OF CONTACT PERSON:

4. ALL TRADE NAMES OR D/B/A'S USED BY CARRIER IN IOWA OR IN ADVERTISING OR BILLING THAT MAY REACH IOWA CUSTOMERS:

5. NAME, MAILING ADDRESS, AND TELEPHONE NUMBER OF AGENT IN IOWA AUTHORIZED TO ACCEPT SERVICE OF PROCESS ON BEHALF OF CARRIER:

6. TYPES OF TELECOMMUNICATIONS SERVICE PROVIDED (CHECK ALL THAT APPLY):

☐ LOCAL EXCHANGE SERVICE

☐ INTEREXCHANGE SERVICE

☐ DATA TRANSMISSION

☐ ALTERNATIVE OPERATOR SERVICES ONLY

☐ OTHER—PLEASE SPECIFY:_____

7. ATTESTATION. I, _____, certify that I am the company officer responsible for this registration, that I have examined the foregoing registration, and that to the best of my knowledge, information, and belief the information is accurate and will be updated as required.

Dated ____/____/____

SIGNATURE_____

b. Failure to register. Failure to file and reasonably update a registration, or provision of false, misleading, or incomplete information, may result in civil penalties under rule 22.23_ and may be considered as evidence of a pattern or practice of violation of these rules.

22.23(4) *Subscriber complaints regarding changes in service—procedures.*

When a telecommunications service provider is contacted by an Iowa customer alleging an unauthorized change in service, the service provider shall inform the customer of the customer's right to contact the Board regarding the complaint. The service provider shall provide the customer with the Board's toll-free number for complaints, (877) 565-4450.

When a subscriber submits to the Board a written complaint alleging an unauthorized change in service, the complaint will be processed by the Board pursuant to chapter 6 of the Board's rules, entitled "Complaint Procedures."

22.23(5) *Civil penalties and assessment of damages.*

a. Civil penalties. In addition to any applicable civil penalty set out in Iowa Code section 476.51, a service provider who violates a provision of the anti-slamming statute, a rule adopted pursuant to the anti-slamming statute, or an order lawfully issued by the board pursuant to the anti-slamming statute, is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

b. Amount. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. Collection. A civil penalty collected pursuant to this subsection shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for consumer education programs administered by the board.

d. Exclusion from regulated rates. A penalty paid by a rate-of-return regulated utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

e. Civil actions. The board shall not commence an administrative proceeding to impose a civil penalty under this rule for acts subject to a civil enforcement action pending in court under Iowa Code section 714D.7.

f. Assessment of damages among interested persons. As a part of formal complaint proceedings, the Board may determine the potential liability, including assessment of damages, for unauthorized changes in service among the customer, the previous service provider, the executing service provider, the submitting service provider, and any other interested persons. In the event of a soft slam, the Board

may impose joint and several liability on the reseller and the facilities-based service provider. For purposes of this rule and in the absence of unusual circumstances, the term "damages" means charges directly relating to the telecommunications services provided to the customer that have appeared or may appear on the customer's bill. The term "damages" does not include incidental, consequential, or punitive damages.

22.23(6) *Penalties for patterns of violations.* If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to this section, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph "a" or "b" to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

22.23(7) *Service provider complaints regarding changes in service.* When a service provider files a written complaint charging another service provider with causing unauthorized changes in end user services to the detriment of the

complaining service provider, the complaint will be processed pursuant to chapter 6 of the Board's rules, entitled "Complaint Procedures," except that any party to the proceeding may petition the Board for an order initiating formal complaint proceedings at any time, regardless of the status of the informal complaint proceedings. The Board will grant such petitions or enter such an order on its own motion if the Board finds that informal complaint proceedings are unlikely to aid in the resolution of the complaint.

July 23, 1999

/s/ Allan T. Thoms

Allan T. Thoms
Chairperson